**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 3935/2006

NANGA
v
ADDL. DISTRICT JUDGE, DEEG & ORS.

Date of Judgment: 22nd NOVEMBER, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. Satyapal Poshwal for the appellant.
Mr. Bipin Gupta for the respondent No. 2 and 3.
Mr. S.N. Gupta, G.A. for respondent No. 4 and 5.

By Court:

The appellant is challenging the order dated 18.10.06 passed by the Addl. District Judge, Deeg whereby an application under Order 39 Rule 1 and 2 of Code of Civil Procedure (henceforth to be referred to as 'the Code', for short) has been dismissed.

The brief facts of the case are that the appellant-plaintiff had filed a suit for permanent injunction and declaration of sale-deed and will dated 2.2.93 as null and void against the defendant-respondents. According to the plaint the appellant had two brothers namely, Sanwalia and Dan Singh. Neither Sanwalia nor Dan Singh were married. The appellant had taken care of Sanwalia during his old age and illness. In fact after the death of Sanwalia and Dan Singh, the appellant was the only legal heir to the family properties

in accordance with Hindu Succession Act. The appellant claimed that on 15.10.99, Sanwalia had executed a will wherein he had clearly stated that after his death, the appellant shall be his legal heir with regard to all his moveable and immoveable property. It was further mentioned that respondent No.2 and 3 who happen to be the appellant's nephews, always wanted to grab the property belonging to Sanwalia. In order to carry out their plan, while Sanwalia was ill and was not of a sound mind, they mischievously forced him to sign a sale-deed and execute the will dated 2.2.93. The defendant No. 2 and 3 in conspiracy with defendant No. 4 to 6, even had the said sale-deed and will registered. However, according to the appellant, the said will and sale-deed was procured by fraud and was, therefore, null and void. He further stated that even earlier he had challenged the sale-deed and the will before the A.C.M. Court. While the proceedings were pending before the said Court, respondent No.2 and 3 had entered into a compromise with the appellant. According to the compromise they had admitted that the appellant was in the possession of the land. They had further stated that they have no objection if the sale-deed and the will dated 2.2.93 is declared as null and void. However, since the A.C.M. Court did not have the proper jurisdiction to hear the case, the suit was dismissed. According to the appellant copy of the said compromise was also filed alongwith the plaint. He had also filed an application under

Order 39 Rule 1 and 2 of the Code. The respondent No.1 and 2 also filed their written statement and had denied the averments made by the appellant. After hearing both the sides, vide order dated 18.10.06 the learned trial court dismissed the application under Order 39 Rule 1 and 2 of the Code. Hence this appeal before this Court.

Mr. Satyapal Poshwal, the learned counsel for the appellant has contended that the learned trial court has ignored the compromise entered between the parties before the ACM Court. According to the compromise the respondent No. 2 and 3 had clearly admitted that the appellant was in possession of the land in question. Therefore, the finding of the learned trial court that no evidence has been produced by the plaintiff to prove his possession of the land is contrary to the record. Furthermore, he has contended that in case the respondents are permitted to alienate the property further to a third party, such a course will lead to the multiplicity of litigation.

On the other hand, Mr. Bipin Gupta, the learned counsel for respondent No. 2 and 3, has vehemently argued that they are bonafide purchasers of the land from the original owner. Therefore, they have prima facie case in their favour. Therefore, he has supported the impugned order.

Considering the fact that at the initial stage of

considering the grant of temporary injunction the Court does not hold a mini-trial, considering the fact that at this initial stage the Court cannot look at the probative value of the documents, considering the fact that according to the compromise entered into between the parties the possession is said to be that of the appellant and not of respondent No. 2 and 3, considering the fact that multiplicity of litigation should be discouraged, this Court is of the view that the status-quo as of 21st November, 2006 shall be maintained by both the parties. Furthermore, the respondent No. 2 and 3 are restrained from transferring, alienating, mortgaging or from creating any charge on the land in dispute during the pendency of the suit. However, as the case has been pending for the last five years, the learned trial court is directed to finally decide the case within a period of eight months from the date of receipt of the certified copy of this order. Both the parties are directed to cooperate with the trial court for an early decision of the case within the stipulated period stated above.

With these observations, this appeal is allowed.

(R.S. CHAUHAN) J.

MRG.